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CURRENT TOPICS

Solicitors and the Stock Exchange

"A COUNTRY SOLICITOR" writing on 21st April a letter which was published in the *Scots Law Times* of 1st May, says: "It is pleasing to learn that a feeling (perhaps even a determination) is growing among solicitors that the time has come when they should form and run their own Stock Exchange or dealing organisation. The idea has many attractions, not only for them, but for their clients. If I may venture a further suggestion to the sponsors of that idea, it would be that they should also consider the idea of running auctions of investments. I understand that dealings in the New York Exchange take the form of auctions. Bankers, insurance companies, investment trusts and the general body of investors would no doubt welcome the establishment of a mart where they could buy and sell investments at a small commission. . . . In view of the decision of the London Stock Exchange to cease sharing commission from the end of this year, it is desirable that the whole position and the alternatives should be fully discussed and reviewed. I think every member of the profession would welcome suggestions about the establishment of an organisation that would make the profession independent of the London and Provincial Stock Exchanges." We would welcome further correspondence on the matter from our own readers.

Town and Country Planning

THE Claims for Depreciation of Land Values Regulations, 1948, made on 29th April, 1948, are to come into operation on 1st July, 1948. They prescribe the manner and the period in which claims for payments under a scheme made under s. 58 of the Town and Country Planning Act, 1947, in respect of interests in land which are depreciated in value by virtue of the provisions of that Act shall be made to the Central Land Board, the particulars which are to accompany such claims and the evidence by which they shall be verified. They also provide for the ascertainment of the development values of interests in land in respect of which such claims are made and for the ascertainment of such particulars as may be required for the purposes of the scheme. The Central Land Board is to be the authority to determine the development values and prescribe the manner in which they shall be determined. Disputes relating to such determinations are to be settled in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919. The practice and procedure to be followed in such cases are set out in the regulations and the right to payment is made conditional upon compliance with the regulations with respect to the making of claims. The manner and period in which notice of any assignment of a right to receive a payment under the scheme is to be given to the Central Land Board in order to be effective are also prescribed. An article at p. 264 of this issue discusses the new regulations more fully.

R.S.C. (No. 1), 1948

A NUMBER of miscellaneous amendments to the Rules of the Supreme Court are contained in S.I. 1948 No. 939 which comes into operation on 1st June next. The Orders affected are Ord. 22 (payment into court) and Ord. 41 (entry of judgment), and a new Order, 54M, dealing with procedure on applications under s. 3 of the Middlesex Deeds Act, 1940, is added. Order 22, r. 1 (3), and its related Form 3 in Appendix B, Pt. II, are amended by the deletion of the requirement that the notice of payment into court shall state whether liability is admitted or denied, and it is now provided that the notice may be modified or withdrawn or amended by leave (see *Cumper* v. *Pothecary* [1941] 2 K.B. 58). A new r. 5A is also added to Ord. 22, providing that in an action for personal injuries where hospital expenses are claimed the party against whom they are claimed may, irrespective of any payment into court, pay to the hospital the amount for which he may be liable under s. 36 (2) of the Road Traffic Act, 1930, without being deemed to have thereby admitted liability. The amendment to Ord. 41 takes the form of a new r. 5A prescribing the form of judgment in favour of the Crown in respect of death duties or purchase tax, and the necessary new forms are also laid down. The new Ord. 54M gives effect to s. 3 (4) of the Middlesex Deeds Act, 1940, by providing that applications to determine questions as to entitlement to an indemnity under that section shall be made in the Chancery Division by originating summons, the Attorney-General being made a party.

"The Great Assize"

AFTER the spilling of much ink on the subject of the Nuremberg trials there comes a neat little pamphlet, "The Great Assize," published at 2s. net, by John Murray, and written by J. H. MORGAN, K.C., of the Inner Temple, Professor Emeritus of Constitutional Law in the University of London and Vice-Chairman of the British Government "War Crimes" Committee of 1918–19. In a preface, the Rt. Hon. VISCOUNT MAUGHAM, formerly Lord Chancellor, expresses the opinion, having regard to the horrors for which the German army and people were responsible, "that the Act of State in question was fully justified from an ethical point of view and will be approved by the voice of history." This does not mean, according to Viscount Maugham as well as the author, that the whole of the field

of inquiry undertaken by the Nuremberg Tribunal was beyond criticism. Viscount Maugham expresses regrets that "a military tribunal appointed for a special purpose thought fit to travel outside its proper jurisdiction." To justify its general jurisdiction Professor Morgan cites *Campbell* v. *Hall*, and he effectively disposes of the defence of "superior orders." Professor Morgan, however, sees no legal ground for the "offences against humanity." But new law has sometimes to be devised to fit the crime when it occurs and if it can be enforced as it was at Nuremberg, so much the better. It is no answer to argue, with Professor Morgan, that every nation is guilty of the oppression of a minority. Even if the Nazi crimes were *in pari materia* with the inferior position of racial minorities in other countries, a law to promote racial equality must begin somewhere in Europe, as it has begun in the U.S.A.

Public Administration

BEHIND the solid-looking phrase "public administration" there is to be found nearly every aspect of political, local and economic government to-day. How widespread and inescapable are its tentacles is explained to lawyer and layman in the clearest of styles and the shortest of compasses in Professor WILLIAM A. ROBSON'S inaugural lecture delivered at the London School of Economics and Political Science, recently published by Stevens as a 26-page pamphlet under the title "Public Administration To-day." Every lawyer must beg, borrow or steal it, if he wishes to understand the tremendous changes that have taken place in the scenes of central and local government in the past few years, and if he wishes not to be a back number in these matters. The growth and increase in the number of ministries and the doubling of civil service staffs in the last decade (711,000 against 376,000 in 1938; 1,016,000, including industrial employees; 2,130,000, including local government employees, and four and a half million workers, including those in the coal industry, public utilities and transport) is illustrated. All serious students of recent tendencies will agree with Professor Robson's argument that local democracy is in danger, and must be saved, if national democracy is to survive. They will further agree that the deplorable tendency to centralisation, as against localisation, must be arrested. It has increased, is increasing, and ought to be diminished. We strongly recommend this historic pamphlet to our readers.

Unlawful Meetings

WHEN the Salvation Army was beginning its career of propagation of the faith, it encountered much opposition in the neighbourhood where its proposed converts lived. Hence arose the law, as laid down in *Beatty* v. *Gilbanks* (1882), 9 Q.B.D. 308, to protect salvationists and all who hold lawful meetings, that an act legal in itself, such as holding a meeting, does not become criminal or unlawful "because it may provoke persons to break the peace, or otherwise to conduct themselves in an illegal way" (*R.* v. *Londonderry JJ.* (1891), 28 L.R. Ir. 440, at pp. 461, 462). On this rule, Dicey imposed the following limitation: "If there is anything unlawful in the conduct of the persons convening or addressing a meeting, and the illegality is of a kind which naturally provokes an opponent to a breach of the peace, the speakers at and the members of the meeting may be held to cause the breach of the peace, and the meeting itself may thus become an unlawful assembly" (Dicey: The Law of the Constitution, 7th ed., p. 273). "If, for example," he continues, "a Protestant controversialist surrounded by his friends uses, in some public place where there is a large Roman Catholic population, abusive language which is in fact slanderous of Roman Catholics . . . and thereby provokes a mob of Roman Catholics to break the peace, the meeting may become an unlawful assembly." The HOME SECRETARY announced on 6th May that 423 police and 411 in reserve were employed at a recent meeting "to ensure that a breach of the peace was prevented so far as is within their power to do so." Especially in these days of police shortage it seems to follow that a meeting of this sort is unlawful.

The Home Office: Pardon and Punishment

SOLICITORS who act for persons charged with crime, whether petty or major, will do well to study a booklet (Stevens: price 2s. 6d.), recently issued under the auspices of the Department of Criminal Science of the Faculty of Law of the University of Cambridge, entitled "The Home Office; Its Functions in relation to the Treatment of Offenders," by Sir ALEXANDER MAXWELL, G.C.B., K.B.E., Permanent Under-Secretary of State, Home Office. Most topical of all the subjects dealt with is the prerogative of mercy. "In a large proportion of the cases," Sir Alexander Maxwell states, "it is ultimately found that no action by the Home Secretary would be warranted, but before that conclusion is reached the representations must be attentively considered and any necessary inquiry must be made . . . As a result of the numerous inquiries which have to be made, there comes to the department a constant flow of information about particular cases from clerks to justices." Another subject on which valuable official information is given is "circulars to magistrates." It is good to know that the Home Office subscribes to the "deeply rooted British belief in the separation of executive from judicial powers," strengthened by present-day experience of judicial methods in the police States of Eastern Europe, where the contrary view prevails. There is everything to be gained, however, in imparting to the courts information on Borstal treatment and the principles of punishment generally.

Recent Decisions

In *Brown* v. *Brash and Another*, on 4th May (*The Times*, 5th May), the Court of Appeal (SCOTT, BUCKNILL and ASQUITH, L.JJ.) held that a statutory tenant whose occupation of the dwelling-house was ended by his being sentenced to two years' imprisonment for theft ceased to have the protection of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, because he had committed intentionally the felonious act which had landed him in prison, and thereby put it out of his own power to assert possession by visible acts (the *corpus possessionis*, which was required in addition to the *animus possidendi* in order to complete the possession which would secure protection). See also p. 268 of this issue.

In *Olley* v. *Marlborough Court, Ltd.*, on 5th May (*The Times*, 6th May), OLIVER, J., held that hotel proprietors were negligent in leaving their key board in such a position that anyone coming in from the street had easy access to it, and the result was that they must bear liability for the loss of clothes from a room in their hotel. Oliver, J., further held that a notice hung in the bedrooms purporting to protect the proprietors was ambiguous and should be construed *contra proferentem* as not affording protection in such a case. The notice stated that: "The proprietors will not hold themselves responsible for articles lost or stolen unless handed to the manageress for safe custody. Valuables should be deposited for safe custody in a sealed package and a receipt obtained."

In *Kincaid* v. *Minister of Pensions*, on 7th May (*The Times*, 8th May), DENNING, J., held that leukæmia was in general on the best medical authority due to a cancerous condition of the blood and was not caused or aggravated by trauma (except in rare cases of intolerable exposure to radio-active substances), infection, diet, climate, exposure, physical and mental strain or stress; it was not infectious or contagious, and was not conveyed by eating or drinking contaminated food or drink. There was, therefore, an overwhelming degree of probability that a death from leukæmia was due to natural causes and was not in any way caused or hastened by any factors incidental to war service. Consequently no pension could be awarded in respect of such a death.

Conflicting decisions on whether *coitus interruptus*, practised by a husband against the wishes of his wife, amounts to wilful refusal to consummate the marriage were given in *Grimes* (*otherwise Edwards*) v. *Grimes* (*The Times*, 11th May) and *White* (*otherwise Berry*) v. *White* (*The Times*, 13th May).

NEW WINE IN OLD BOTTLES

THE capacity of the common law for bringing off a neat adaptation of one of its established principles to cope with some modern novelty in the circumstances of a case has several times been insisted on in these columns. The month of March saw two clear examples of this flexibility which deserve the attention alike of the theorist, the practitioner and the student—*Stansbie* v. *Truman* (1948), 92 SOL. J. 167 in the realm of torts, and *Receiver for the Metropolitan Police District* v. *Tatum* (1948), 92 SOL. J. 221 which, though based on an allegation of the defendant's negligence, presented a problem which the learned judge resolved by carrying it into the much disputed territory of quasi-contract.

The solid foundations of the law of negligence were discussed at p. 18, *ante*, in connection with the particular case of the duty owed by a road user to other persons who might happen to be on the road. The primary question of law in all cases of negligence is the same: did the defendant owe to the plaintiff a duty of care? It was recalled in the previous article referred to that Lord Atkin's attempt in *Donoghue* v. *Stevenson* [1932] A.C. 562, to reduce to a formula the answer to this primary question, though its stir still ripples through the reports, is now generally agreed to have been too comprehensive. du Parcq, L.J., in *De Yong* v. *Shenburn* [1946] K.B. 227, expressed the position thus: "It is not true to say that wherever a man finds himself in such a position that unless he does a certain act another person may suffer, or that if he does something another person will suffer, then it is his duty in the one case to be careful to do the act and in the other case to be careful not to do the act. Any such proposition is much too wide. There has to be a breach of a duty which the law recognises, and to ascertain what the law recognises regard must be had to the decisions of the courts." The law's flexibility at this point surely lies in the fact that the list of such decisions is never closed, but remains perpetually subject to the addition of fresh precedents as each new set of circumstances arises.

The relationship importing such a duty of care as the law recognises "may arise by contract, or it may arise by operation of law through two persons being thrown into a particular relationship to one another" (*per* Lord Greene, M.R., in *Woolfall and Rimmer* v. *Moyle* [1942] 1 K.B. 66). Thus the duty has long been held to exist in the common case of two users of the highway; between a professional man or other person performing services and his client or customer (in which case the duty involves the exercise of skill as well as care); by the occupier of premises towards persons coming to them by invitation or licence. All these and many other examples, including *Donoghue* v. *Stevenson* itself, are no more than particular instances of the existence of the duty, and ought not to be regarded as laying down any principle outside their own facts. To these examples must now be added the case of a person engaged to do work in a house who is so placed in the course of his engagement that he has control over access to the house, he being in contractual relationship with its occupier. The duty now established in such a case appears to be that of exercising reasonable care with regard to the state of the premises so as to guard against persons breaking in.

The facts in *Stansbie* v. *Troman* were that the plaintiff, a painter and decorator, was engaged by contract to do work in the defendant's house. The defendant was at the material time away at his business, and the defendant's wife also went out, leaving the plaintiff working in the house alone, as he knew. On similar occasions previously he had been warned by the defendant's wife to pull to the front door when he left. This would have had the effect of locking the door with a Yale lock. The plaintiff had occasion to leave the premises in search of some materials, and wishing to be able to re-enter, he pulled back the catch of the Yale lock and so left the door unlocked. He had to be away longer than he had expected, and on his return discovered that someone had entered during his absence and had stolen certain jewellery. In an action by the plaintiff for the price of work and labour done, the defendant set up a counter-claim for damages for negligence in leaving the house with the front door unlocked. Both claim and counter-claim succeeded in the county court and on appeal. Tucker, L.J., agreed with the plaintiff's counsel that any duty owed by the plaintiff to the defendant must be within the scope of the contractual relationship between the parties. "But I think," he proceeded, "that the contractual relationship did impose a duty on the plaintiff to take reasonable care with regard to the state of the premises if he left them during the performance of his work, or at the conclusion of the working day. That, I think, was the measure of the duty." The lord justice agreed with the finding of the county court judge that there had been a breach of this duty, and also held (but this is a point which raises considerations not relevant here) that the damage in question flowed from the plaintiff's negligent act.

A somewhat similar approach, no less adaptable to changing conditions than in the case of negligence, seems to be adopted by the modern law to the problems of what used to be called quasi-contract. This is not the place to pursue the academic controversy as to whether the legal fiction of an implied contract is an essential feature of those actions in which the law affords a remedy to a person who is being kept out of money to which he is by plain reason entitled but which he could not recover in contract or in tort. Lord Mansfield attempted the task of propounding a rational principle which would meet all such cases. But his suggested yardstick of *æquum et bonum* (*Moses* v. *Macfarlan* (1760), 2 Burr. 1005) has proved even more elastic than Lord Atkin's measure of a neighbour. Dissenting from Lord Mansfield's wide generalisation, judges retreated to the opposite extreme, and the cases in which the "unjust enrichment" of one party gave a remedy to the other were for long regarded as fixed and readily enumerable constituents of a category closed against further expansion. Founding on the views of Lord Sumner (*Sinclair* v. *Brougham* [1914] A.C., at p. 453), text-books lay down the instances under the headings of money had and received to the use of the plaintiff; money paid under compulsion of law; money paid under mistake of fact, and so on.

The first hint in recent years that this agglomeration might not comprise a fixed category so much as a list of examples of cases in which the courts could remedy unjust enrichment seems to have come in *Brook's Wharf and Bull Wharf* v. *Goodman* [1937] 1 K.B. 534, a case which fell, on its facts, within a well-settled principle of law, but which drew from Lord Wright a valuable *excursus* on the theoretical ground for the decision. Speaking of the obligation to reimburse money paid by the plaintiff under compulsion of law, he says: "The obligation is imposed by the court simply under the circumstances of the case and on what the court decides is just and reasonable, having regard to the relationship of the parties." Lord Wright's more exhaustive account of the nature of quasi-contract in the *Fibrosa* case [1943] A.C. 32 serves to reinforce his conclusion in the earlier case.

The tale has now been taken up by Atkinson, J., in *Receiver for the Metropolitan Police District* v. *Tatum*, *supra*. At first sight, that case appears to be covered by the decision of MacKinnon, J., in *A.-G.* v. *Valle-Jones* [1935] 2 K.B. 209, by which the Crown was held entitled to recover hospital expenses and sick pay expended for a period during which its servants were incapacitated owing to the defendant's negligence. But in the recent case the policeman who had been injured was, according to *Fisher* v. *Oldham Corporation* [1930] 2 K.B. 364, not in the plaintiff's employ, but in that of the Crown. Though the Receiver was a statutory corporation sole entitled to sue and be sued, he plainly was not suing on behalf of the Crown. So far as hospital expenses were concerned, *A.-G.* v. *Valle-Jones* provided direct authority, but the expenditure on the injured person's pay during the period of incapacity had seemed in that case to have been awarded to the Crown on the ground of loss of services (see "Torts against a Servant," 91 SOL. J. 157). Atkinson, J., now finds justification for such a claim on different grounds to which any relationship of

master and servant is immaterial. Citing Lord Wright in the *Brook's Wharf* case, he holds that since the Receiver was compelled to pay money which the defendant, by reason of his negligence, was legally liable to pay, the Receiver is entitled to recover the money from the defendant.

Incidentally, another recent decision (*Dennis* v. *L.P.T.B.* [1948] 1 All E.R. 779) suggests that in loss of services claims where the servant also has a cause of action there is no need for a separate action by the employer.

J. F. J.

TOWN AND COUNTRY PLANNING ACT, 1947

CLAIMS FOR DEPRECIATION OF LAND VALUES

THE recent issue of the Claims for Depreciation of Land Values Regulations, 1948 (S.I. 1948 No. 902), made by the Minister of Town and Country Planning under the Town and Country Planning Act, 1947, is an important event for all advisers of landowners, since they regulate the procedure to be followed in the making of claims for loss of development value against the fund of £300,000,000 set up to cover cases of hardship arising from such loss. The regulations come into operation on 1st July, 1948, and the object of this article is to describe their more important features; but first two questions must be considered, namely, (1) who may claim, and (2) what is to be claimed?

(1) The persons entitled to payments out of the fund are—

(*a*) owners on 1st July, 1948, of legal estates, freehold or leasehold, in land or tenants under agreements for leases or underleases, but not mortgagees or holders of options to take leases or mortgages (ss. 60 (3), 64 and 119);

(*b*) assignees of the right to receive a payment (s. 64 (2))—on a sale of land after 1st July, 1948, the right to receive a payment in respect of the land does not pass to a purchaser unless there is an express assignment of it; and

(*c*) owners who between 6th August, 1947, and 1st July, 1948, have conveyed their land to an authority who had power to acquire it compulsorily, whether or not the power was exercised, if no agreement has been made expressly excluding s. 91 (2) of the Act.

Neither the Act nor the regulations specify expressly who is to claim, and it might be that an assignee of a right where no claim has been made by the assignor could claim in his own name. Regulation 3, however, appears to contemplate that the claim will be made by the owner of the land. It is clear from the definition of "claimant" in the regulations that all proceedings subsequent to the initial claim may be carried on by an assignee who has given notice of his assignment, but further information may have to be supplied which only the owner can supply. It is suggested, therefore, that any assignment by an owner should contain an undertaking by him to execute such documents, including any necessary form of claim, supply such information and do such other things, including making any necessary statutory declarations, as the assignee may require to prosecute his claim.

In deciding whether to submit a claim the provisions of s. 63 of the Act, excluding small claims, should also be considered.

(2) The claim is for depreciation of an interest in land. An interest is depreciated if the restricted value (i.e., broadly speaking, existing use value) on 1st July, 1948, is less than the unrestricted value (i.e., broadly speaking, what the market value for any use would have been if the Act had not been passed) on that day. Details as to these two values are contained in s. 61 (2) (*a*) and (*b*), and the values are calculated by reference to the level of values immediately before 7th January, 1947, when the Bill was published. The difference between these two values is the development value and it is to determine this that elaborate machinery is laid down in the regulations.

The machinery laid down for arriving at the lost development value is not unfair to owners, who are given opportunity for argument and access to an independent arbitrator. The steps to be taken are shortly as follows:—

(1) The claim must be made to the Central Land Board on a form to be issued by the Board. Forms of claim will be available in due course from the offices of local authorities. The regulations give no less than twenty-five heads under which the form may require information. These are directed to finding out the state, title and use of the land and the amount of the development value claimed, with the restricted and unrestricted values by reference to which it is calculated and other particulars required for preparing a distribution scheme for the fund, e.g. relating to hardship (reg. 3). The claim must be made not later than 31st March, 1949, except where it was not reasonably possible to claim by this date, when the Board may extend the time up to but not beyond 30th June, 1949 (regs. 4 and 11). The Board may demand further information (reg. 5) and verification by statutory declaration (reg. 9). Non-compliance with regs. 3, 4 and 5 defeats the claim (reg. 10).

(2) The Board, having considered the claim, must serve notice on the claimant of the amount at which they propose to determine the development value and the amounts of the restricted and unrestricted values by which it is arrived at (reg. 12).

(3) Within sixty days of this notice the claimant may give the Board notice of objection to the proposal specifying his grounds of objection (reg. 12 (4)).

(4) The Board consider the grounds of objection (there is no express provision for a hearing), determine the amount of the development value and give the claimant notice in writing of this (reg. 12 (5)).

(5) If the claimant disputes this determination he may, within thirty days, give notice to the Board of the dispute, the grounds thereof and the restricted and unrestricted values for which he contends. The dispute then stands referred for settlement to an official arbitrator appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919. Immediately after giving this notice the claimant must send a copy to the Reference Committee for England and Wales at the Royal Courts of Justice, with an application for the selection of an arbitrator, and a copy of this application is to be sent to the Board. The form of application and fees will be found in rules made under the 1919 Act, S.R. & Os., 1919, No. 1836 and 1931, No. 157. The arbitrator's award is conclusive as to the development value (reg. 13).

(6) The claimant may also within six weeks of any determination apply to the High Court to quash the determination on the ground that his interests have been substantially prejudiced by non-compliance with the requirements of the regulations other than those relating to arbitration (reg. 15).

In addition to the foregoing procedure the regulations contain two provisions as to the giving of notices:—

(1) An assignment of a right to receive a payment will be of no effect unless notice in writing is given to the Board not earlier than 1st July, 1948, and not later than 31st December, 1952. In practice, notice should be given as soon as possible after 1st July, so that the assignee may come into direct touch with the Board. No form is prescribed, but the notice must enable the Board to identify the land and the interest to which it relates (reg. 7).

(2) Notice must be given to the Board within thirty days when between the making of the claim and 1st January, 1953, an enforcement notice under s. 75 is served or the claimant sells the land to an authority having power to acquire it compulsorily. These events may alter the

development value and enable the Board to reopen a determination (regs. 8 and 14; ss. 75 (6) and 91 (3)). Failure to give the notice does not appear to defeat the claim.

The result of all this procedure is simply the fixing on a basis of pure valuation of the amount of development value lost and the collection of information which may assist in assessing the degree of hardship suffered. The owner must not think that he will receive this or necessarily any sum from the Board. Indeed, except in special cases, he is unlikely to receive this sum as the total development values will probably be far in excess of the fund available. All the figures ascertained by this procedure go to the Treasury, who then make their distribution scheme for the £300,000,000 fund, but by s. 58 (4) the distribution may be by reference to development values or to such other circumstances as may be prescribed by the scheme or both. In fact, it seems clear that there will not be a rateable distribution based solely on the ascertained development values. Hardship is to be one of the factors in distribution; thus preferential treatment will be given to owners of "near ripe" land while others, e.g., in certain circumstances persons who have bought land since the Bill was introduced (see 91 SOL. J. 579), may be deferred. Despite the careful machinery for fixing development value, the individual owner appears to have no right of objection or appeal in respect either of the amount apportioned to him by the distribution scheme, however small a fraction of the development value, or of the assessment of his hardship. Further, it will probably be some four years before payment is made by the allotment of Government stock.

In conclusion, it may be well to refer to the position of those most seriously concerned with loss of development value, namely, the owners of "ripe" and "near ripe" land. If the land is qualified to receive the Minister's certificate that it is ripe under s. 80, application for the certificate should be made to the Ministry not later than 1st July, 1949, unless the Minister grants an extension, and for the reasons mentioned in 91 SOL. J. 632, it is desirable that it should be made as soon as possible. No regulations are to be made governing the procedure. If the certificate is granted no question of a claim for depreciation arises so far as the development specified in the certificate is concerned, but the Minister's decision may not be known until after 1st July, 1949, and he may refuse a certificate even if the land satisfies the conditions laid down, whereas the last date for depreciation claims is normally 31st March, 1949, and exceptionally 1st July, 1949. Therefore where time is running out it seems advisable to prepare and submit a depreciation claim also. Where the land has a greater development value than that warranted by the development specified in the certificate it would seem proper to submit a depreciation claim for the balance. A final warning on ripe land: the Minister's certificate may impose a time limit within which the development must be carried out. If it is not carried out within this time the benefit of the certificate will be lost, the benefit being, of course, the relief of the development from any development charge, and it will, no doubt, be too late to claim for depreciation.

The Minister's statement as to "near ripe" land will be found in Parliamentary Debates, House of Commons, Standing Committee D for Wednesday, 26th March, 1947, and was referred to in 91 SOL. J. 200. The preferential treatment for "near ripe" land is to be given in the Treasury distribution scheme, and therefore owners in this category must follow the depreciation claim procedure.

R. N. D. H.

Taxation

TAXATION IN LEGAL PRACTICE—IX

COMPANIES—I

IT is perhaps in studying the position of companies under the Income Tax Acts that the modern lawyer, his eyes accustomed to focussing themselves on the present general law, obtains the most striking impression of unreality. For this two causes may possibly be assigned. In the first place, tax law is based to an extent greater than is generally realised upon statutes passed between 1799 and 1806, some years before the rise in our law and our society of the joint stock company. Then again, that newcomer to the scene, having proved its worth as a commercial expedient and won its spurs of limited liability, was discovered at a much later stage to be a useful instrument for assisting in the avoidance of unwelcome taxation. The child of an industrial revolution became the handmaid of a financial one. Thus it is that on the one hand the original scheme of the income tax ignores some of the special problems relating to companies, while the Legislature's measures to counter tax avoidance seem calculated to heighten, as they must if they are effectively to lay the burden where it ought to have fallen, the general sense of artificiality by falsifying the state of affairs created *ad hoc* by the avoider. It is proposed here, first, to make some observations on matters of general principle which should be of interest to the lawyer, reserving for treatment in a further article the most important of the anti-evasion obstacles and devices which concern companies.

Naturally, no doubt, when its history and its character of a consolidating measure are remembered, the Income Tax Act, 1918, will be found to refer very seldom to a company. There are some technical provisions authorising special deductions for management expenses in the case of certain kinds of company, and certain distinct bases of assessment for others, notably assurance and railway companies. But nowhere in the charging sections of the Act does the word "company" occur. However, by r. 1 of the General Rules applicable to All Schedules and appended to the Act, every body of persons is chargeable to tax in like manner as any person is chargeable. And by s. 237 a body of persons means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not. Of course, the word "person" which is frequently used in the administrative and other provisions of the Act extends to a company by virtue of s. 19 of the Interpretation Act, 1889.

So far all is in accord with such decisions as *Salomon* v. *Salomon* [1897] A.C. 22, which have proceeded on the basis that a corporation is in all circumstances a legal entity separate from the members who compose it. The underlying anomaly begins to take shape as we examine the treatment by the Acts of the different types of income arising to a company and its members.

Let us take the common case where a company is formed to acquire a business formerly carried on by an individual. The company will often, in consideration for the transfer of the business which it acquires, allot and issue shares to the vendor. In respect of those shares the vendor is a member of the company. It would be possible to describe this set of transactions by saying that a fresh legal *persona* had been interposed in the scheme of things, and that a source of income formerly possessed by the vendor—the profits of the trade carried on—had passed into the possession of the company. But the vendor is not left without a source of income, for the company, if all goes well, may sooner or later declare dividends. For the present we will assume that it does so. Failure to declare dividends may in the case of some companies bring into play the anti-avoidance provisions with which we are not for the moment concerned.

Now, the company being a distinct entity, the strictly logical view of these dividends is that they constitute a separate and new kind of income in the hands of the vendor as shareholder. That, however, is not the scheme of the Acts. Such a dividend is indisputably income, but it is not income of a kind which is directly charged by the Acts. The Acts seem to treat the word "dividend" in a literal sense as a kind of allocation of a share in profits which have already borne tax, as if (Lord Phillimore pointed out in *Bradbury* v. *English*

Sewing Cotton Co., Ltd. [1923] A.C. 744) the shareholder were a partner in a firm. In explanation of this, Lord Phillimore suggests that the taxation of dividends as such would seem to be logical, but would be destructive of joint stock company enterprise.

The *Salomon* principle is observed inasmuch as it is the company which is liable for the tax on its profits. It has not the advantage of the instalment provisions (s. 157). Section 106 lays upon the secretary of the company or other officer (by whatsoever name called) performing the duties of secretary the answerability for all such acts as are required to be done for the purpose of the assessment of tax on the company and for payment of the tax; and it is provided that he may from time to time retain out of any money coming to his hands on behalf of the body sufficient to pay the tax and that he shall be indemnified for all such payments. Under this section the secretary or other officer mentioned is obviously responsible, *inter alia*, for the making of the returns prescribed by the statutes or demanded thereunder.

General Rule 20 deals with the stage at which the profits are to be computed. The computation is to be on the full amount of the profits or gains "before any dividend is made in respect of any share right or title thereto." Further, the company paying such dividend is to be entitled, though not bound, to deduct the "tax appropriate thereto." Applying s. 39 (1) of the Finance Act, 1927, this expression means tax at the standard rate for the year in which the amount payable becomes due. Lord Russell of Killowen noted, in *Cull* v. *C.I.R.* [1940] A.C. 62, that the tax which can be deducted is thus in no way comparable with the tax payable by the company itself. Dividends do not, of course, become due until they are declared, a fact which prevents their being annual payments under Case III, and under the ordinary deduction rules, rr. 19 and 21 (see *per* Viscount Simon, L.C., in *Canadian Eagle Oil Co., Ltd.* v. *R.* [1946] A.C. 119). Interest on the loan capital of a company is, however, within these rules. Apart from any deduction it may bear under r. 20, a dividend, as such, is not chargeable to tax at the standard rate, though it must be brought into account as an item in total income for the purposes of sur-tax and relief claims (*Neumann* v. *C.I.R.* [1934] A.C. 215). The dividend is deemed for this purpose to represent income of a "grossed up" amount, except in the case of a fixed interest preference dividend (Finance Act, 1931, s. 7 (2)), even though the payment is made "without deduction of tax" (Finance Act, 1940, s. 20).

Rule 20 was one of the provisions discussed by the House of Lords in *Canadian Eagle Oil Co., Ltd.* v. *R.*, *supra*, and the clear conclusion was reached that the rule "is intended to relate only to a company or other body which is chargeable to tax in the United Kingdom upon all its profits from whatever source derived" (*per* Viscount Simon); that is to say, for practical purposes to a company which is resident in the United Kingdom. "Residence," in the case of companies, is a complicated matter which must not detain us here. Suffice it to notice that if a company which is not so resident pays a dividend direct to a shareholder in the United Kingdom tax is not deducted, but the dividend is assessable directly on the shareholder under Case V of Sched. D; while, if it does so through the medium of a paying agent in this country, that agent is bound by r. 7 of the Miscellaneous Rules of the same Schedule to pay the tax on the dividends on behalf of those entitled thereto, and he is to be acquitted in respect of all such payments, the tax being assessed on him by the Special Commissioners. One result of a company residing in the United Kingdom, then, is that the profits of all its trading, wherever carried on, are assessable under Case I. In this event the Revenue can charge its tax when the profit is earned. This is not so in the case of a non-resident company, and so a special rule (r. 7) is then necessary to implement the charging provisions of Case V and to make provision for intercepting at a later stage so much of the profit as is remitted to this country for distribution here. When it is remembered that a non-resident company may be incorporated in the United Kingdom and so be indistinguishable in constitution from one which *is* resident, it will be seen that the distinction drawn by the Income Tax Acts proceeds rather from practical considerations than from legal theory.

"Z"

A Conveyancer's Diary

THE SPECIAL CONTRIBUTION AND TRUST INCOME

It is not normally profitable to comment at length on the provisions of a Finance Bill, but there are some aspects of the "once-for-all" levy as they appear in the recently issued Finance (No. 2) Bill which deserve the serious and immediate attention of the profession. If a sufficient amount of public attention can be aroused and brought to bear on our legislators before the Bill reaches the committee stage, the blemishes which seem to me to produce consequences of unnecessary hardship may be removed before it is too late. It is for this reason that this article appears to-day.

The provisions which strike me as in need of some amendment are those which deal with the incidence of the levy on income derived under a trust. The general scheme of the levy, or to give it the official designation, the special contribution, is simple and will be widely known by now. The contribution is charged by reference to an individual's aggregate investment income for the year 1947–48, and a person becomes subject to the charge if (*a*) his total income for that year exceeded £2,000, and (*b*) his aggregate investment income similarly exceeded £250 (cl. 46 (1)). Liability to the contribution in the case of persons not domiciled in the United Kingdom is determined by residence (cl. 46 (3)). The contribution is charged by assessment on the individual and is payable by the individual (with one exception, at least, which will be noticed later), but where an individual dies before the assessment is made, the assessment may be made on his personal representatives (cl. 46 (5) and (7)).

The ascertainment of an individual's total income for the purposes of the contribution will be on the lines adopted for sur-tax purposes, but the vital expression "aggregate investment income" is the subject of detailed definition in cll. 48 and 49. These provisions follow the usual pattern of their predecessors in legislating largely by reference, in this case to the Income Tax Acts, and I am content to leave their elucidation to the expert in that field. Various anomalies in these provisions have already caught the public eye; for example, the apparent inequality in treatment in the case of persons who derive income from a private limited company. If the bulk of the company's profits are distributed in the form of dividends, the dividends so received are apparently investment income in the hands of the recipient for the purposes of the contribution, but if the directors have voted themselves large directors' fees out of the profits, the fees are not regarded as investment income and so escape the charge. This is usually a distinction without a difference in the case of family trading concerns, some of which have adopted the one method of distributing profits and some the other, but perhaps there is something in existing legislation or income tax practice which leads to uniform treatment in such cases.

The broad effect of the contribution is, however, clear. It is a charge assessed by reference to an individual's investment income for the year 1947–48, becoming payable where the individual's total income for that period exceeded £2,000 and his investment income exceeded £250. The rate of contribution is 10 per cent. on the first £250 of the excess of the aggregate investment income over £250, rising to 50 per cent. at the highest part of the scale (cl. 46 (1)).

The clauses of the Bill which deal with income derived under a trust are cll. 52, 55 and 56. Clause 52 provides, broadly, that any payments which are made to an individual otherwise than out of the income of the trust shall be

disregarded in ascertaining the individual's investment income. An annuitant who is entitled to have his annuity made up out of capital in the event of the income of the fund proving insufficient to pay it in full will, therefore, escape liability on so much of the annual sum received as was paid out of capital; and similarly advances of capital made to a beneficiary will be disregarded. Clause 52 (3) provides that nothing in this section shall affect the ascertainment of an individual's total income, but the purpose of this provision is not clear. In the examples I have given the payments out of capital, whether made in augmentation of income or not, are not income for the purpose of the Income Tax Acts at all, and it is not easy to envisage any form of capital payment under a trust which, if disregarded under cl. 52 for the purpose of ascertaining aggregate investment income, would not also be disregarded under the normal rules for the purpose of ascertaining income.

Clause 55 deals with the recovery of the contribution from trustees. Normally the individual assessed to the charge will pay the contribution, and in that case he has the right to recover from the trustees of any trust whereunder he is a beneficiary the proportion of the total contribution paid which is attributable to the benefit he has derived under the trust (cl. 55 (1)). Alternatively, the Special Commissioners may themselves recover such proportion of the total contribution payable by an individual from the trustees direct, if either (*a*) the individual primarily liable to pay gives notice to the Commissioners to that effect, or (*b*) any part of the contribution remains unpaid for twenty-eight days after it became due (cl. 55 (2)). In either of these events the individual's liability to pay the contribution or such portion of it as is attributable to the trust income is automatically reduced, and the liability to pay shifts to the trustees. The Crown can recover the contribution from the trustees as from an individual, as a debt due to the Crown (cl. 54 (1)). In the case of a settlement taking effect under the Settled Land Act, 1925, the person accountable is the tenant for life and not the trustees (cl. 55 (3) (*a*)). There are detailed provisions for the collection of the contribution from the trustees or tenant for life, dealing with such matters as ancillary trusts, of which two call for notice here. Under cl. 55 (6) a trustee or tenant for life who becomes liable to pay a contribution assessed on an individual beneficiary may call upon the Special Commissioners to provide a certificate of the amount due and of the income by reference to which it has become assessed; and cl. 55 (7) provides that where any property is held as to parts thereof on different trusts, the provisions relating to recovery from trustees shall apply separately to each part. In this context, what constitutes a different trust is a question which is bound to lead to some lively controversy.

Clause 56 deals with the application of trust property in payment of the contribution, and it is this clause which, in my opinion, in its present form will lead to grave injustice. Capital money may be applied to pay the contribution, and this extends to capital money applicable by trustees under s. 28 of the Law of Property Act, 1925 (cl. 56 (1)). No difficulties arise in relation to this common-sense provision.

Clause 56 (2) is, I think, the crucial provision in the part of the Bill which deals with trusts. It runs as follows:—

> "(2) As between the persons interested (whether in income or capital) under a trust, the law relating to the ultimate incidence of estate duty shall apply to any amount falling to be paid [under the foregoing provisions] in respect of income derived from property subject to the trust as if that amount were estate duty charged on that property on the cesser of a life interest therein occurring at the end of the year 1947–48, and were charged as on property not passing to the executor as such:
>
> Provided that as between any annuity, other than one by reason of which the said amount or any part thereof fell to be paid, and other interests, the amount shall be borne by the other interests to the exoneration of the annuity."

The effect of this sub-clause, as I see it, is that if any charge attaches to a trust fund held on a single trust, all beneficiaries (except annuitants) having an interest therein will have to bear a share of the charge, even if some of them are, as individuals, not assessable to the contribution. An example may illustrate the position. A trust fund is held upon trust to pay A an annuity, and subject thereto the income is payable, at the end of the year 1947–48, to B for life with remainder to C and D absolutely. B's income is such that he is subject to the contribution, but A, C and D are not. The proportion of the total contribution payable by B ascertained in accordance with cl. 55 (1) thereupon falls to be paid out of the fund. The incidence of the charge will not fall on B's life interest solely, but will be paid ultimately by all the persons interested under the trust, according to the principle in *Re Charlesworth's Trusts* [1912] 1 Ch. 319, with the exception that the annuitant, A, will escape liability by reason of the proviso to cl. 56 (2). In other words, the remaindermen will bear a share of the burden, although it is, from their point of view, purely accidental that B is subject to the contribution. This is not inequity; it is iniquity.

It may be noted that in the example the interests of C and D under the trust, being in remainder and consequently yielding no income in the year 1947–48, cannot in any way raise or increase any individual liability to the contribution so far as C and D are concerned.

The reason for the proviso regarding annuities is not easy to understand, even in the circumstances postulated in the illustration given above, and its effect may be still more capricious. A trust fund is held on trust for A for life, with remainder to pay an annuity to B, and subject thereto in trust for C absolutely. A is a contributor. On his death the whole incidence of the liability to contribution as between B and C will fall on C, for the proviso operates to exempt B. Yet B's annuity may absorb the greater part of the fund, and the ultimate effect may well be that C's interest in remainder may disappear after provision has been made for payment of the contribution.

I will not labour the point. If it is intended to levy the contribution on trust income at the proposed rates, some charge on capital is inevitable, but the proviso regarding annuities seems to me to have been insufficiently considered, or ill drafted, or both. If an amendment exempting interests in remainder under a trust from any liability to the charge (with the inevitable consequence of reducing the amount of the charge to such an extent that a beneficiary with a limited interest can pay it out of income over a period) is acceptable, many forms of amendment will suggest themselves. Whatever the outcome, cl. 56 (2) in its present form is badly conceived and most inequitable, and leaving party politics aside it is surely susceptible of some modification.

There are some further points in regard to the contribution which I hope to discuss next week.

"A B C"

Landlord and Tenant Notebook

NON-OCCUPYING STATUTORY TENANT

Brown v. *Brash and Another*, a decision of the Court of Appeal reported in *The Times* of 5th May, contains some new and useful authority on what is meant by "retains possession" in s. 15 (1) of the Increase of Rent etc. Restrictions Act, 1920: "A tenant who by virtue of the provisions of this Act *retains possession* of any dwelling-house to which, etc. . . . shall, so long as he retains possession . . . be entitled to the benefit of all the terms and conditions of the original contract of tenancy . . ." The case involved examination of the essential requirement of so retaining possession, and an element not hitherto stressed was given prominence.

Shortly the facts were that the plaintiff and his mistress

occupied a dwelling-house within the Act of which he was the tenant; during the currency of a notice to quit at Christmas, 1945, he committed larceny and was sent to prison; while he was incarcerated, and after the notice to quit had expired, his mistress left the premises, taking most of his furniture with her; the landlord, one of the defendants in the action, then let them to the other defendant; the plaintiff was released and claimed possession. This being refused, he sued, and won at first instance.

The proposition that a statutory tenant may remain protected though not continuously on the premises is recognised and supported by the very authorities which illustrate the ultimate loss of protection by non-residence. *Keeves* v. *Dean*, *Nunn* v. *Pelligrini* [1924] 1 K.B. 685 (C.A.) was the case which decided that a statutory tenant cannot assign, so may be considered indirect authority on this point; such a statement as "the moment the assignor gives up possession his right of entry ceases" (Lush, J.) implies that a non-occupying tenant forfeits his rights. More in point is *Skinner* v. *Geary* [1931] 2 K.B. 546 (C.A.); the defendant-tenant in that case had, for eleven years before he received notice to quit, permitted his wife's sister and her husband to live in the house, he going elsewhere, and they were succeeded by his sister. "It is obvious that it would be impossible to say that, because a man goes away for reasons of either business or pleasure, for a day or a week or even a few months, intending to come back, he ceases to reside at the premises. But this is a case of a man who does not reside at the premises, who has not resided there for a considerable time, and on whose absence from the premises there is no limit in point of time, either express or to be collected from the circumstances" runs a passage from the judgment of Talbot, J., which clearly indicates the legal position—up to a point. For the plaintiff in *Brown* v. *Brash* may well have sought to distinguish his case in at least two respects; he had not gone away for reasons of business, still less for reasons of pleasure; but there was a limit, indeed an express limit in point of time, on his absence. The judgment of Scrutton, L.J., in *Skinner* v. *Geary*, *supra*, contains a different hypothetical illustration. After saying "the Acts do not apply to a person who is not personally occupying the house and who has no intention of returning to it" the learned lord justice proceeded: "I except, of course, such a case as that to which I have already referred—namely of temporary absence, the best instance of which is that of a sea captain who may be away for months but who intends to return, and whose wife and family occupy the house during his absence." Greer and Slesser, L.JJ., expressed agreement with Scrutton, L.J.'s proposition without adding examples.

But if these authorities suggest that a mere inward intention to return on the part of a protected tenant will suffice for retention of possession the Court of Appeal, in *Brown* v. *Brash*, *supra*, decided otherwise, holding first that prolonged absence imposed upon the tenant the burden of proving retention, next that he must establish a *de facto* intention to return, and thirdly that inward intention was not enough; and the new requirement laid down was, in effect, that he must not be the author of his own misfortune. The plaintiff had, it was conceded, not intended to go to prison; but he had committed intentionally the felonious act which landed him there.

History and fiction have provided us with a number of examples of people anxious to return, but prevented from returning, home—and no doubt tenants absent in such circumstances as those surrounding Ulysses, who went away for the duration which proved to be ten years and spent as long in getting back; or Alexander Selkirk, the prototype of Robinson Crusoe; or Enoch Arden (who ultimately decided not to rebut the presumption) would be classed with Scrutton, L.J.'s hypothetical sea captain. And obviously, this would apply to the ordinary case of a prisoner of war. But what of Richard I, whose hasty temper may have "landed him there"? And what of those imprisoned for offences demanding no *mens rea*, or whose presence in gaol and absence from home results from either inability or conscientious refusal to pay a fine? It may well be that further explanation of what is meant by the word "thereby" in the sentence: "True, he had not intended to go to prison, but he committed intentionally the felonious act which landed him there; and *thereby* put it out of his power to assert possession by visible acts" will be called for.

The court also examined the question of coupling and clothing the inward intention with some formal, outward and visible sign, e.g., installing some caretaker or representative, be it a relative or not, with the status of a licensee and the function of preserving the premises for the tenant's ultimate home-coming. This possibility was, in fact, touched upon by Greer, L.J., in *Skinner* v. *Geary*, *supra*: "A man may remain in possession in law, even if he is not physically upon the premises, if he is occupying the premises by a licensee" and a striking example was afforded of the possibility more recently by *Brown* v. *Draper* [1944] 1 K.B. 309 (C.A.), when protection was held to extend to an absent tenant who had left his wife (they having separated) and his furniture on the controlled premises. As to the latter, the judgments left us in some doubt how important was its presence; at times, it certainly looks as if the court had considered the possibility that the defendant might want to collect it strong evidence of his retaining possession. And while the plaintiff in *Brown* v. *Brash*, *supra*, left some furniture, the greater part of which was removed by the mistress when she left in March, 1946, it was her departure which, according to the judgment, terminated his possession and right to protection. But it was said that it "might be" that the object could be secured "by leaving on the premises, as deliberate symbols of occupation, furniture" (though this would not mean that someone else was profiting by the accommodation not standing empty).

It will be noticed that the new decision implies that a landlord need not, in such circumstances, take proceedings in order to assert his rights; the statutory tenancy expires as soon as the protected tenant ceases to retain possession.

R. B.

TO-DAY AND YESTERDAY

LOOKING BACK

LORD CHANCELLOR JEFFREYS was not, as his enemies liked to pretend, a person of low birth. He was a Welshman whose forebears had enjoyed estates in Denbighshire for many generations and in whose veins flowed the blood of chieftains of his people. His grandfather, John, who first assumed the surname of Jeffreys, was a Bencher of Lincoln's Inn and a judge in North Wales. From him his descendants inherited the estate of Acton Park, near Wrexham. His widow married another successful lawyer, Sir Thomas Ireland, himself a widower, and in due course her son, John, married Ireland's daughter Margaret. The young couple settled at Acton, but John also had property in the vicinity of Shrewsbury where he was a member of the Common Council. Early in the Civil War, the town became the Royalist headquarters in the west, but in 1645 it was taken by the Parliamentarians. Somewhat less than two months later, George, the sixth son of John and Margaret Jeffreys, was born at Acton Park on 15th May. At the age of seven, he was sent with his elder brothers to Shrewsbury Grammar School. Afterwards, he removed to London, first to St. Paul's School and then to Westminster School. Finally he went up to Trinity College, Cambridge. In 1663, he took the first step on the road which led him to the Woolsack, being admitted to the Inner Temple. His old father lived to see both his triumphs and his ultimate disgrace, living till 1691 and surviving him by two years.

KEN WOOD

IT is reported that the Ministry of Works has granted a licence for the repair of Ken Wood House at Hampstead to the extent of £1,500. The seat of the great Lord Chief Justice Mansfield escaped the frenzy of the Gordon Riots in 1780, when the mob burnt his house in Bloomsbury Square, to lie peacefully in its

wooded parkland till the last war, when it was badly damaged by the blast of a bomb (" a near miss " to use the jargon of the time) which pitted its walls. The beauty of the grounds and the fine collection of pictures, now in the care of the National Portrait Gallery, used to draw thousands of Londoners northwards to Hampstead, and this is a piece of restoration long overdue. The property was bought by Lord Mansfield in 1755 when he was Sir William Murray, Attorney-General. It was then " small and far from being of an elegant description " and he proceeded to enlarge and embellish it with a new front to the designs of Robert Adams. The library, 60 feet long by 21 feet broad, was decorated with paintings by Zucchi. Some aspects of the house, in which the Ionic order is predominant, have a rather forbidding severity and the charm of the place depends chiefly on the grounds laid out by the Chief Justice himself and the magnificent groupings of the trees standing in broad masses to comprise a splendid sylvan landscape. These are mainly oak, but the poet Pope had a favourite retreat in a fine avenue of limes and with his own hands Lord Mansfield planted cedars in the lawn.

LORD MANSFIELD'S RETREAT

WHEN Lord Mansfield retired from the Bench in 1788, it was to Ken Wood that he went, for since the destruction of his town house, this his country seat had been his only residence. Till his death five years later, he did not spend a night away from it but devoted his energies to improving it for his own delight and that of his guests. Among those were the practitioners from his former court whom he would invite to spend the day with him. Once, when a party of them came upon him reading beneath a great beech-tree, a young man made bold to observe : " Instead of listening to the wrangling of Westminster Hall, how much better for your lordship to be *recubans sub tegmine fagi ?* " To this the old gentleman responded in the same vein : " *O Melibœe, deus nobis hæc otia fecit.*" Here at Ken Wood he died in 1793, in his eighty-ninth year. On 10th March, a Sunday, he was not altogether himself at breakfast, seeming heavy and sleepy, and he was put to bed and given stimulants, for his pulse was low. By the Tuesday, he felt well enough to ask to be taken to his chair, but he soon wearied, repeating " Let me sleep ! Let me sleep ! " These were his last words, for he was put to bed again unconscious but breathing freely and easily and with perfect calm and quiet, and thus he remained till the night of Wednesday, 20th March, when he expired without a groan.

REVIEWS

Notes on Matrimonial Causes Proceeding in District Registries. By T. S. HUMPHREYS, lately Clerk in Charge, Birmingham District Registry. Second Edition. 1948. London : The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

This second edition, with a foreword by F. G. Glanfield, Senior District Registrar, of a very useful little book by a former clerk in charge, District Registry, Birmingham, is a welcome guide to practitioners as regards the proceedings in district registries. It incorporates the changes effected since the first edition by the Matrimonial Causes Rules, 1947, and the subsequent amending rules, and the Exchange Control Act, 1947, and the rules made thereunder, which now apply to matrimonial causes. As regards the form, the book follows the lines of the earlier edition, and the various points of procedure under the rules are dealt with, from the preparation and form of a petition and the methods of service to the district registrar's certificate and directions for trial and decree absolute, ancillary relief, costs and heading and title of suit, reference being made to the appropriate form required. The appendix contains a most useful collection of forms, ranging from petitions of dissolution and nullity and affidavit of service of petitions, to district registrars' and judges' summonses covering a variety of matters.

Palmer's Company Law. Eighteenth edition. By His Hon. Judge TOPHAM, LL.M., K.C., a Bencher of Lincoln's Inn. 1948. London : Stevens & Sons, Ltd. 35s. net.

This edition appears at a time when the last provisions of the Companies Act, 1947, are about to be brought into force and the consolidating Bill is still before Parliament. It is intended to fill the interval which must elapse before text-books embodying the consolidation Act are produced. This it does admirably and, in addition to 492 pages of text in the form with which previous users of Palmer will be familiar, the Act of 1929 as now amended is included in the first Appendix and the Act of 1947, suitably cross-referenced, appears in the second.

Clerk and Lindsell on the Law of Torts. Tenth edition. General Editor : HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law. 1947. London : Sweet & Maxwell, Ltd. 70s. net.

Ten years have elapsed since the appearance of the ninth edition of this work but the majority of those who collaborated in the preparation of that edition appear again as editors of the tenth. The present edition is intended as a companion volume to the twentieth edition of Chitty on Contracts and, with the aid of a first supplement, gives the law as at 1st December, 1947. The preface is dated January, 1947, and the main text appears to have been completed at about that time.

The law of torts is ever productive of new and sometimes conflicting theories and no single text-book can hope to do justice to them all. For the same reason, however, there is no subject on which an up-to-date text-book is more vital to the practitioner. The tenth edition of Clerk and Lindsell opens with a 75-page dissertation on the Principles of Liability, by Dr. Potter, and then proceeds to deal in detail with all the various headings, or specific torts, into which the subject is commonly divided. There are also chapters on Patents, Copyright and Trade Marks and a new section on Statutory Authority as a defence to an action and Breach of Statutory Duty as a cause of action.

Whether the reader be interested in academic study of the law or in its practical application he will find this book valuable. From the practitioner's point of view, however, there might be more extensive references to decisions which, whilst not laying down any startling new proposition of law, have facts which may easily be reproduced in later cases. Examples are *Lewys* v. *Burnett and Dunbar* [1945] 2 All E.R. 555, on the duty of care owed to a person gratuitiously carried in a vehicle, and *Daborn* v. *Bath Tramways* [1946] 2 All E.R. 333, as to the standard of care to be shown by the driver of a " left-hand drive " vehicle. Decisions of this type may not require discussion in the text but surely deserve a reference in a footnote.

BOOKS RECEIVED

The Trial of German Major War Criminals. Part 15. 1948. pp. ix and 422. London : H.M. Stationery Office. 7s. net.

The Early Factory Legislation. By MAURICE W. THOMAS, M.A., LL.M., Barrister-at-Law. 1948. pp. xiii and (with Index) 470. Leigh-on-Sea : The Thames Bank Publishing Co., Ltd. 35s. net.

A First Book of English Law. By O. HOOD PHILLIPS, M.A., B.C.L. (Oxon), of Gray's Inn, Barrister-at-Law. 1948. pp. xx and (with Index) 271. London : Sweet and Maxwell, Ltd. 16s. net.

Crown Proceedings. By RONALD MCMILLAN BELL, M.A., of Gray's Inn and the Wales and Chester Circuit, Barrister-at-Law. 1948. pp. xxxii and (with Index) 251. London : Sweet and Maxwell, Ltd. 17s. 6d. net.

A Divorce Handbook. Including other Matrimonial Causes. By S. SEUFFERT, of the Middle Temple and South-Eastern Circuit, Barrister-at-Law. 1948. pp. xxviii and (with Index) 192. London : The Solicitors' Law Stationery Society, Ltd. 17s. 6d. net.

Commercial Goodwill. By P. D. LEAKE. Fourth Edition. 1948. pp. xiii and (with Index) 201. London : Gee & Co. (Publishers), Ltd. 17s. 6d. net.

Snell's Principles of Equity. Twenty-Third Edition. By R. E. MEGARRY, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. 1947. pp. cxxiv, 606 and (Index) 27. London : Sweet & Maxwell, Ltd. 37s. 6d. net.

Oyez Practice Notes, No. 5 : Apportionments for Executors and Trustees. By J. F. JOSLING, Solicitor of the Supreme Court. Assisted by CHARLES CAPLIN, LL.B. 1948. pp. 28. London : The Solicitors' Law Stationery Society, Ltd. 2s. net.

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NOTES OF CASES

CHANCERY DIVISION

WILL: BEQUEST OF LEASEHOLD HOUSE TO WIFE "SO LONG AS SHE WISHES TO RESIDE THERE"

***In re* Hodson's Will Trusts; Hodson *v.* Horth**

Vaisey, J. 29th April, 1948

Adjourned summons.

A testator bequeathed a certain leasehold house to his wife "so long as she wishes to reside there," and directed that it should fall into residue at her death. On his death in 1911, the wife went into occupation of the house, and continued to live in it until November, 1942, when she was obliged to enter a mental hospital. She had remained in the hospital ever since, and it appeared that her illness was of a permanent character. She had remarried at some unspecified date, and her second husband continued to reside in the house. The summons was taken out to ascertain whether or not, in the events which had happened, her life interest had determined.

VAISEY, J., said that an unbroken residence in the house from 1911 to 1942 indicated that the wife had an affection for it; there was no evidence that she had ever wished to abandon the house where her husband still lived. Assuming that she was not now able to express a wish, he would infer that her residence in the hospital was not her voluntary act, and that if she could express a wish, it would be to live in her own house. The case was distinguishable from one in which the condition was one of actual residence. She must be deemed still to wish to reside in the house, and her life interest had not determined. Costs of all parties as between solicitor and client to be paid out of residue.

APPEARANCES: *Rafferty* (*F. T. Jones & Son*); *Basil James* (*F. T. Jones & Son*); *Mumford* (*Official Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

ADMINISTRATION: DESTRUCTION BY FIRE OF HOUSE SPECIFICALLY DEVISED

***In re* Rushbrook's Will Trusts; Allwood *v.* Norwich Diocesan Board of Finance**

Vaisey, J. 30th April, 1948.

Adjourned summons.

A farm was specifically devised by the testator to the first defendants. Shortly before his death, but after the date of the will, the farmhouse was burned down. The testator received £400 in insurance, and entered into a contract (admitted as enforceable) with a builder to effect the necessary repairs for £550. The builder delivered a load of bricks on the farm on the day before the testator's death, but the executors shortly afterwards disclaimed the contract, a course in which the builder acquiesced. The devisees claimed that the executors were liable to complete the repairs at the expense of the testator's estate, and the summons was taken out to determine this question.

VAISEY, J., said that the contention of the devisees was correct. There was not much authority, but the question was touched on in *Holt* v. *Holt* (1694), 2 Vern. 322, and *Cooper* v. *Jarman* (1866), L.R. 3 Eq. 98. *In re Day* [1898] 2 Ch. 510 was in point, and the criticisms of it in *Angullia* v. *Estates and Trust Agencies* (1927), *Ltd.* [1938] A.C. 624 were too faint to affect its authority. He would accordingly follow it. The right of the devisees was to have applied out of residue such sum, not exceeding £550, as might be required to effect the repairs. Costs of all parties as between solicitor and client out of the estate.

APPEARANCES: *M. J. Albery, N. S. Warren* (*Haslewood, Hare & Co.*, for *Hood, Vores & Allwood*, East Dereham); *J. A. Brightman* (*Field, Roscoe & Co.*, for *Hansell & Co.*, Norwich); *A. P. McNabb* (*J. H. Milner & Son.*, for *Sir Robert Gower*, Tunbridge Wells).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

VENDOR AND PURCHASER: PREMISES VESTED IN COMPANY CONTROLLED BY VENDOR

Elliott *v.* Pierson

Harman, J. 30th April, 1948

Witness action.

In December, 1946, the plaintiff H E granted to the defendant an option to purchase the business of a road-house "lock, stock and barrel." H E had purchased the road-house early in 1945, and at the time of transfer had procured the assurance of the freehold of the premises to the plaintiff H E, Ltd., from which company he took a lease for twenty-one years. H E was the legal and beneficial owner of all the shares in H E, Ltd., except one, which was held by his nominee. He was a life director and sole director, the articles only requiring a quorum of one. On 17th January, 1947, the defendant exercised the option, being then aware (as found by Harman, J.) that the freehold was vested in H E, Ltd. Certain disputes arose between the parties, and on 24th March, 1947, the defendant repudiated the contract, ostensibly because H E refused to supply an inventory of effects. The plaintiffs brought an action for specific performance. The defence raised a number of issues not material to this report, and in particular it was contended that the contract was unenforceable because it was made with H E, who had no legal right to compel H E, Ltd., to execute then ecessary conveyance of the freehold.

HARMAN, J., after deciding the other issues in favour of the plaintiffs, said that at law A could contract to sell something to B and enforce the contract if at the time of performance he had a sufficient interest in the subject-matter or could compel other interested parties to concur. This doctrine was qualified in cases of specific performance of sale of land by a rule, analagous to that in *Bain* v. *Fothergill* (1874), L.R. 7 H.L. 158, which permitted a purchaser, who found that the vendor had not sufficient title, to repudiate (*Halkett* v. *Dudley* [1907] 1 Ch. 590, criticised in "Williams" but followed in *Proctor* v. *Pugh* [1921] 2 Ch. 256), provided that he did so at once (*Halkett* v. *Dudley, supra*; *Forrer* v. *Nash* (1865), 35 Beav. 167). If the defendant ever had a right to repudiate, he lost it by delay. He, however, had never had such a right. A vendor who could compel the assurance of all the necessary interests could enforce the contract (*In re Hailes and Hutchinson's Contract* [1920] 1 Ch. 233). H E, by virtue of his position as regards H E, Ltd., could procure it to act as he chose. There would be an order for specific performance.

APPEARANCES: *Jennings*, K.C., and *The Hon. D. Buckley* (*George C. Carter & Co.*); *J. G. Strangman* (*Mawby, Barrie and Letts*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

CONDITIONS OF EMPLOYMENT: WAGES CLAIM

Simpson *v.* Kodak, Ltd.

Sellers, J. 16th April, 1948

Action.

The plaintiff was employed by the defendants in one of their film factories for eight years ending on 31st December, 1945, when he left their employment. He brought this action claiming £121 4s. alleged to be wages to which he was entitled for the period 1st February to 31st December, 1945, in excess of what he had actually been paid, in view of an award, effective from the earlier date, of the National Arbitration Tribunal made between the plaintiff's trade union and an association of employers. The tribunal was set up under the Conditions of Employment and National Arbitration Order, 1940, by art. 2 (5) of which "it shall be an implied term of the contract between the employers and workers to whom the . . . award relates that the . . . wages to be paid . . . under the contract shall be in accordance with such . . . award . . ." By art. 5 (1), where in any industry terms of employment are settled by an award in certain circumstances "all employers in that . . . industry in that district shall observe the recognised terms . . . or . . . terms . . . not less favourable than the recognised terms . . ." The plaintiff contended that art. 5 (1) in the circumstances of the case imposed a statutory liability on the company to pay him in accordance with the award.

SELLERS, J., said that the contention under art. 5 (1) required decision of the difficult issues of fact indicated in that provision. The company contended that the court was not called on to consider them because the machinery for disposing of them was laid down in art. 5 (3). The plaintiff's claim under this head was negatived by *Hulland* v. *William Sanders & Co.* [1945] K.B. 78, where it was held that under para. 2 (5) it was only where an award had been made by the tribunal that it became, from the date fixed by the award, an implied term of the contract of employment that wages in accordance with the award should be paid, so that the employee became entitled to sue; and that the question whether the employers had paid the settled rate under art. 5 (1) must be reported to the Minister under art. 5 (3). The Minister must refer it to the tribunal, whose award on the matter would then become implied into the contract of employment. The plaintiff here, therefore, had failed to establish a contractual or other right to receive, because of the award of August, 1945, more wages than he had accepted. He next relied on s. 34 (1) of the Cinematograph Films Act, 1938, which provided that the wages of a person employed in the business

of making photographic films were not to be less favourable to him than those which would be payable under a Government contract, and that "any dispute . . . as to what wages ought to be paid . . . in accordance with this section . . . shall, if not otherwise disposed of, be referred by the Board of Trade to the industrial court for settlement." The question was whether the plaintiff was entitled by that section, on establishing the necessary facts showing that he had received less than he ought to have received, to maintain an action to recover the balance. That section seemed clearly to defeat the present claim on much the same grounds as were shown in *Hulland* v. *Sanders & Co., supra*, by virtue of art. 5 (3) of the Order of 1940. A dispute as to wages must, by s. 34, first have been referred to the industrial court. It was argued that the words "if not otherwise disposed of" kept the jurisdiction of the court in operation, but s. 34 (3) showed that the implied term that wages other than those stipulated in the original contract of employment should be paid must be established formally before it could give rise to an action to enforce it. The plaintiff had not taken the steps which would entitle him to sue under s. 34. Finally, the claim was based on the fact that during the plaintiff's employment with them the company had been engaged on contracts with the Government containing the fair wages clause, a copy of which clause at some time had been exhibited at the factory where the plaintiff worked. There was no evidence that he had seen it. Even if he had, that clause, in a contract between his employers and the Government, did not entitle him to sue for wages different from those specified in his own contract of employment. If he did see the clause and yet accepted his wages week after week, that was evidence that the employers were complying with the standard set. In any event there was no evidence that they were not doing so. Action dismissed.

APPEARANCES: *Harry Samuels* (*Pollard, Cooper and Thorowgood*); *Scott Cairns*, K.C., and *The Hon. T. G. Roche* (*Bristows, Cooke & Carpmael*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHARTER-PARTY: "DEFICIENCY OF MEN"

Royal Greek Government *v.* Minister of Transport

Sellers, J. 23rd April, 1948

Special case stated by an arbitrator.

By a time charter dated 29th August, 1941, the claimant government, as disponent owners, let the steamship "Ilissos" to the respondent Minister at 16s. 6d. a ton a month. By cl. 11 (*a*) of the charter-party, in certain events, including "deficiency of men or owners' stores . . . or other accident . . . preventing the working of the vessel . . . no hire to be paid in respect of any time lost thereby . . ." Clause 34 provided for reduced hire in the event of "inability to get or complete a crew . . ." For a week in 1943 the ship was held up in Newcastle, Australia, when ready to sail because her officers and crew refused to sail without convoy. There was a full complement numerically during the week, the vessel being out of service simply owing to the refusal to work. The arbitrator awarded that hire remained payable during the week.

SELLERS, J., said that the charterers contended that the facts found established "deficiency of men" or "other accident" within cl. 11 (*a*), and, further, that there was no "inability to get or complete a crew" within cl. 34, so that the limited hire there specified was not recoverable; that the arbitrator's view that "deficiency of men" meant numerical deficiency was too narrow, the word "deficiency" being both quantitative and qualitative, and being referable to both sufficiency in numbers and willingness to work. Reference was made to Lord Blackburn's speech in *Inman Steamship Co., Ltd.* v. *Bischoff* (1882), 7 App. Cas. 670, at p. 685. He (his lordship) found the argument unacceptable, though attractive. Illness among the crew hindering or preventing the working of the ship would be a "deficiency" within cl. 11 (*a*). Refusal to work when full capacity to do so existed was different. The complete crew being present, but unwilling to take the ship to sea, there was no "deficiency of men." "Deficiency" in its plain meaning meant numerical deficiency. It was then argued that the refusal of the crew, though deliberate, was an "accident" as between the parties to the contract. He thought that that refusal had no element of accident in it. The arbitrator was right, and the claim to hire was maintainable. Judgment for the claimants.

APPEARANCES: *Sir Robert Aske*, K.C., and *Mocatta* (*Holman, Fenwick & Willan*); *Sir William McNair*, K.C., and *E. W. Roskill* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

FOOD AND DRUGS: ADULTERATED WHISKEY KEPT BY LICENSEE FOR PRIVATE USE

Thompson *v.* Ball

Lord Goddard, C.J., Humphreys and Pritchard, JJ.

28th April, 1948

Case stated by Oxfordshire (Henley) justices.

The appellant, an inspector of weights and measures, charged the respondent, the licensee of a public house, with selling adulterated whiskey to the prejudice of the purchaser contrary to s. 3 (1) of the Food and Drugs Act, 1938. The inspector visited the licensed premises and introduced himself. On the counter in the bar was a small bottle containing whiskey. On a shelf behind the bar was a larger bottle also containing whiskey. The inspector asked for half a pint of whiskey from the large bottle. The licensee replied that it was not for sale, and that he kept it only for the use of himself and his family. The inspector insisted, and a third request was reluctantly complied with by the licensee because he feared that he might otherwise commit an offence by obstructing the inspector in the exercise of his powers; but he reiterated that that whiskey was not for sale, and accepted 22s. for the half pint with reluctance. On analysis the whiskey was found to contain added water. The justices found that it had not been displayed for sale to the public, and that it was the licensee's practice to keep the whiskey for his own use in view of the large number of customers who bought him drinks. They decided that there had been no sale as there never had been any real agreement to sell, and that, if there was a sale, it was not to the prejudice of the purchaser within the meaning of the Act of 1938 because the inspector obtained what he asked for after being given sufficient notice that it was not of the quality demanded. They accordingly dismissed the information, and the inspector appealed.

LORD GODDARD, C.J.—HUMPHREYS and PRITCHARD, JJ., agreeing—said that the inspector, a public official, had bullied the licensee, who, fearing that, with all the powers which such inspectors had, he might be committing an offence by obstructing him in the execution of his duty, was induced to part with his whiskey against his will. It was a matter of general knowledge that licensees kept a bottle of diluted whiskey at hand for their own use because customers constantly asked them to have drinks and there was then less chance of the licensees becoming intoxicated. Appeal dismissed.

APPEARANCES: *G. G. Baker* (*the Town Clerk*, Oxford); *R. G. Micklethwait* (*Brain & Brain*, Reading).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHRISTIAN NAME MISSPELT IN SUMMONS

Dring *v.* Mann

Lord Goddard, C.J., Humphreys and Pritchard, JJ.

29th April, 1948

Case stated by Essex (Ongar) justices.

The appellant charged the respondent with being the owner of a dangerous dog and failing to keep it under control, contrary to the Dogs Act, 1871. It was proved that the respondent's name was Rosa Jane Mann and that her dog had been worrying sheep. At the close of the case for the prosecution it was submitted for the respondent that the information should be dismissed because it had been laid against her in the name of Rose, instead of Rosa, Jane Mann. The justices held that they had no power to continue to hear the case as the respondent had been incorrectly named in the summons and there was no power to amend it after the prosecution had closed their case. The prosecution appealed.

LORD GODDARD, C.J.—HUMPHREYS and PRITCHARD, JJ., agreeing—said that the court had thought it right, before giving judgment, to inquire how the justices had come to reach their decision, in particular whether they had consulted their clerk. The court thought it deplorable that the defendant's advocate should have taken before a lay tribunal such a point as this about the defendant's name. They could not believe that counsel would have done so. A point of that kind ought not to be taken by any advocate. The justices, it now appeared, had consulted their clerk. That acquitted them, because they were entitled to rely on him. In *R.* v. *Norkett* (1915), 139 L.T.Jo. 316, it was held that, where a defendant was described in the summons by a wrong Christian name, the justices had power to make the necessary amendment before the hearing. On that the clerk appeared to have advised the justices that it followed that there was no power to make the necessary amendment after the hearing had begun. Moreover, no attention had been paid to s. 1 of the

Summary Jurisdiction Act, 1848, which provided for an objection such as that taken here. Appeal allowed. Case remitted.

APPEARANCES: *Gordon Clark* (*Sharpe, Pritchard & Co.*, for *Arthur Morgan*, Chelmsford). The respondent did not appear, and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: RIGHT TO REPRESENTATION BY COUNSEL

R. *v.* Kingston

Humphreys, Oliver and Birkett, JJ. 11th May, 1948

Appeal from conviction.

The appellant was convicted before the Assistant Recorder of Manchester of receiving stolen property, namely, a roll of cloth, and sentenced to six months' imprisonment. She now appealed on the ground that she had been deprived at her trial, through no fault of her own, of the services of her counsel whom she had briefed. On her plea of not guilty before the Assistant Recorder, counsel for the prosecution applied for the case to be postponed as the appellant's counsel was not present. The jury had been sworn, and the Assistant Recorder said that the case must go on and that the court would watch the appellant's interest. The case was accordingly opened, the appellant being in the circumstances unrepresented. She refused to cross-examine the witnesses for the prosecution, saying that she thought it very unfair that counsel whom she had briefed could not defend her. The case for the prosecution having been concluded, the Assistant Recorder explained to the appellant fully what her rights were. She replied that she could say a lot but did not know how to put it into words.

HUMPHREYS, J., giving the judgment of the court, said that the result of the proceedings was that the appellant had been convicted by a jury who were never informed of the defence, if there was any. This unfortunate situation had arisen because of the failure of counsel for the appellant to be present at the trial or to see that some other member of the Bar was briefed in his place. The Assistant Recorder had been fully justified, in the circumstances, in proceeding with the trial. It would have been wrong to waste three hours of the jury's time. The court would not have interfered but for the fact that, at one point during the trial, counsel for the prosecution suggested that there were counsel available who would hold the brief for the appellant's counsel but the Assistant Recorder replied that he could do nothing about it. They (their lordships) thought that it would have been eminently desirable that he should have accepted the suggestion, as his refusal was tantamount to depriving the appellant of her right to be defended by counsel. The case came near to *Galos Hired* v. *R.* [1944] A.C. 149, in the Privy Council. If the court had the power which, as it had said time after time it ought to have, and which they (their lordships) hoped would be given to it in the new Criminal Justice Act, of ordering a new trial, it would have done so in the present case, which cried out for a new trial. On the whole, the court had come to the conclusion that, as it was always better that a guilty person should escape justice than that a possibly innocent one should be condemned, the conviction must be quashed.

APPEARANCES: *Gerald Abrahams* (*Sandler & Co.*, Manchester); *Haycock* (The Town Clerk, Manchester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ERRATUM

We regret that in our report of *Argonaut Navigation Co., Ltd.* v. *Minister of Food* (*ante*, p. 246), it was incorrectly stated that no claim for demurrage arose. In fact, the specified period for loading having been exceeded owing to the necessary bagging, the shipowners' claim for demurrage was successful.

OBITUARY

Mr. W. A. D. ENGLEFIELD

Mr. William Alexander Devereux Englefield, solicitor, of Messrs. Pritchard, Englefield & Co., of Little Trinity Lane, London, E.C.4, died on 23rd April, aged fifty-nine. He was admitted in 1912, and in 1943 was elected Master of the Painter-Stainers' Company. He was also clerk to the Coopers' Company and to the Ward of Queenhithe.

MR. H. R. THOMPSON

Mr. Henry Roderick Thompson, retired solicitor, of Messrs. Andrew & Thompson, of Swansea, died recently, aged seventy-three. He was admitted in 1897.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—
- CARDIFF CORPORATION (EXTENSION OF TIME) BILL [H.C.] [30th April.
- LORD HIGH COMMISSIONER (CHURCH OF SCOTLAND) BILL [H.C.] [4th May.

Read Second Time:—
- AGRICULTURAL WAGES BILL [H.L.] [4th May.
- COTTON SPINNING (RE-EQUIPMENT SUBSIDY) BILL [H.C.] [6th May.
- EDUCATION (MISCELLANEOUS PROVISIONS) BILL [H.C.] [6th May.
- MERTHYR TYDFIL CORPORATION BILL [H.C.] [6th May.
- ROCHDALE CORPORATION BILL [H.C.] [6th May.
- SUPERANNUATION (MISCELLANEOUS PROVISIONS) BILL [H.C.] [4th May.
- UNIVERSITY OF SHEFFIELD (LANDS) BILL [H.C.] [6th May.

Read Third Time:—
- RADIOACTIVE SUBSTANCES BILL [H.L.] [6th May.
- ROUND OAK STEEL WORKS (LEVEL CROSSINGS) BILL [H.L.] [4th May.

In Committee:—
- DEVELOPMENT OF INVENTIONS BILL [H.L.] [6th May.
- FACTORIES BILL [H.L.] [4th May.
- VETERINARY SURGEONS BILL [H.L.] [4th May.

HOUSE OF COMMONS

Read First Time:—
- NURSERIES AND CHILD-MINDERS REGULATION BILL [H.C.] [6th May.

To provide for the regulation of certain nurseries and of persons who for reward receive children into their homes to look after them; and for purposes connected with the matters aforesaid.

Read Second Time:—
- CHILDREN BILL [H.L.] [7th May.
- FINANCE (No. 2) BILL [H.C.] [6th May.
- HOUSE OF COMMONS MEMBERS' FUND BILL [H.C.] [5th May.
- MINISTRY OF HEALTH PROVISIONAL ORDER (SHEFFIELD) BILL [H.C.] [5th May.
- MOTOR SPIRIT (REGULATION) BILL [H.C.] [3rd May.

Read Third Time:—
- ASCOT RACE COURSE BILL [H.C.] [7th May.
- LONDON COUNTY COUNCIL (GENERAL POWERS) BILL [H.C.] [7th May.

QUESTIONS TO MINISTERS

TOWN AND COUNTRY PLANNING. APPLICATIONS (COMPREHENSIVE FORM)

Mr. DEREK WALKER-SMITH asked the Minister of Town and Country Planning whether he is aware that the provisions of the Town and Country Planning (Making of Applications) Regulations, 1948 (S.I. 1948 No. 711) do not represent a complete fulfilment of his declared goal of a single comprehensive application; and whether in these circumstances any further action in regard thereto is to be expected.

Mr. SILKIN: I have been discussing the preparation of a composite form with the associations of local planning authorities and have gone quite a long way towards it. Practical difficulties made it impossible to prescribe the form in time for the appointed day, but I shall be resuming my discussions, and, provided that these show that a single document of a type that would be convenient for developers can be produced, the Minister of Health and I will make further regulations for this purpose. [4th May.

BOMB DAMAGE CLAIMS

Mr. G. THOMAS asked the President of the Board of Trade whether he would now make some payment under the Repayment of War Damage (Commodities) Act to business firms who had to replace bomb-damaged fixtures and fittings out of income, although the charge was not allowable against income tax.

Mr. BOTTOMLEY, in a written reply, stated that the Board of Trade were already empowered to pay claims in advance of the date of general settlement if they were satisfied that replacement or repair of the goods was expedient in the public interest, and they were always ready to consider applications. [4th May.

RENT RESTRICTIONS ACTS

Mr. PALMER asked the Minister of Health if he will make arrangements for local authorities to furnish tenants on request with information provided by s. 40 of the Rating and Valuation Act, 1925, in order that they may ascertain their position under the Rent Restrictions Acts.

Mr. BEVAN: No, sir. A landlord of a controlled house may be obliged, under the Rent Restrictions Acts, to inform his tenant what the standard rent is; and if he fails to do so, local authorities have powers, which I hope they will use in suitable cases, to institute proceedings. [6th May.

LAW OF LIBEL (REPORT)

Replying to Mr. PLATTS-MILLS, the ATTORNEY-GENERAL said that it was hoped that the Porter Committee on the law of libel and slander would settle the draft report in its final form soon, and the report would then be published. [3rd May.

ROYAL COMMISSION ON JUSTICES OF THE PEACE

The UNDER-SECRETARY OF STATE FOR THE HOME DEPARTMENT (Mr. YOUNGER), in answer to Mr. GOOCH, said that the Royal Commission on Justices of the Peace expected to complete their report shortly. [3rd May.

JUSTICES' CLERKS (REPORT)

In a written reply to Mr. PALMER, the HOME SECRETARY stated that he was anxious to introduce legislation on the matters dealt with in the Report of the Departmental Committee on Justices' Clerks, but he could not yet say when that would be possible. [6th May.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 902. **Claims for Depreciation** of Land Values Regulations, 1948. April 29.

No. 907. Claims for Depreciation of Land Values (Scotland) Regulations, 1948. April 27.

No. 939. **Rules of the Supreme Court** (No. 1), 1948. April 27.

No. 953. **Seizure of Food** Order, 1948 (Amendment) Order, 1948. May 5.

No. 914. **Town and Country Planning** (Application for Planning Permission, etc.) (Scotland) Regulations, 1948. April 29.

MINISTRY OF TOWN AND COUNTRY PLANNING

Circular No. 43. Claims for Depreciation of Land Values Regulations, 1948. May 6.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The King has approved the appointment of Mr. HERBERT ST. GEORGE PEACOCK to be chairman of East Suffolk Quarter Sessions, and of Mr. EWEN EDWARD SAMUEL MONTAGU, K.C., to be deputy-chairman of County of Southampton Quarter Sessions.

The Chancellor of the Duchy of Lancaster has announced the appointment of Sir LEONARD STONE, K.C., as Vice-Chancellor of the County Palatine of Lancaster on the resignation of Sir John Bennett. Sir Leonard was lately Chief Justice of Bombay.

Mr. WILFRED RUTLEY MOWLL has been appointed Coroner for East Kent in succession to his father, the late Mr. William Rutley Mowll. Mr. Wilfred Mowll was admitted in 1936.

Mr. N. S. FISHER, Assistant Solicitor to Macclesfield Corporation, has been appointed Assistant Solicitor to Derby Corporation.

Mr. JAMES SMITH, Clerk to Skipton Urban Council since February, 1946, has been appointed to a similar post at Denton, near Manchester. He was admitted in 1931.

Mr. G. G. R. HICKES, Assistant Solicitor to Rochdale Corporation, has been appointed Chief Administrative Assistant to the Southern Electricity Board. He was admitted in 1939.

The following appointments are announced in the Colonial Legal Service: Mr. W. G. ALCOCK, Lands Officer and Registrar General, Nyasaland, to be Official Assignee, Singapore; Mr. J. H. M. DE COMARMOND, Puisne Judge, Palestine, to be Attorney-General, Uganda; and Mr. W. H. GOUDIE to be Resident Magistrate, Kenya.

Notes

The Union Society of London, which meets in the Barristers' Refreshment Room, Lincoln's Inn, at 8.15 p.m., announces the following debates: Wednesday, 26th May: "That this House advocates the immediate formation of a Federation of European States." Wednesday, 2nd June: "That this House welcomes the tendency to replace academic tests by tests of character."

The members of the executive council of the International Law Association resident in Great Britain gave a dinner at the Oxford and Cambridge Club, on 7th May, in honour of the members of the council from abroad. There were present: The Lord Chancellor, Lord Schuster, Mr. Justice Hodson, Professor A. L. Goodhart, K.C., Me. J. V. Bernier, Judge Boeg, Dr. A. Brauen, M. Henri Cochaux, Me. L. Dor, Me. J. P. Govare, Dr. K. Jansma, Professor de la Pradelle, Dr. Paul Abel, Dr. C. J. Colombos, Mr. William Latey, Mr. V. R. Idelson, K.C., Dr. R. Kuratowski, Mr. J. H. Morgan, K.C., Dr. G. M. Palliccia, Mr. Arthur Jaffé and Mr. W. Harvey Moore, K.C.

The Local Government Boundary Commission announce that they intend to begin the review of all county districts in thirteen counties in June and July this year. The review will begin in each case with a joint meeting to which the county council and all district councils will be invited to send representatives, after which separate consultations will be held with each council.

The counties concerned, with the dates of the joint meetings, are: Berks, Devon, Dorset, Northumberland, West Suffolk (7th June); Durham, Northampton, Salop (8th June); East Suffolk (17th June); Oxford (28th June); Buckingham, Wilts, York (N. Riding) (5th July).

PRACTICE NOTE

ORDERS FOR MAINTENANCE IN DECREES NISI

When an order for maintenance is embodied in a decree nisi to take effect when such decree becomes absolute, the registrar will, on the decree becoming absolute, endorse on the decree nisi and sign a note that it has been made absolute on a certain day. In order to make the order for maintenance effective a copy of the decree nisi with such note endorsed should be served upon the party who is ordered to pay or his solicitors.

SENIOR REGISTRAR, *Principal Probate Registry.*

STAMP DUTIES: CONCESSIONS TO SOLICITORS IN NORTHERN IRELAND

The Northern Ireland Minister of Finance has decided to reduce the stamp duty on solicitors' indentures from £80 to half-a-crown, and to make the reduction retrospective to the 1st May, 1947, so that those who paid £80 during the year 1947–48 may be entitled to a refund of £79 17s. 6d. No stamp duty is to be payable on the admission of any person as a solicitor or a notary public, and the stamp duties paid by solicitors on the annual certificates which they must take out is to be reduced to one-twentieth of the amounts required by the Stamp Act of 1891. The effect of this will be that solicitors in the City of Belfast who have practised for more than three years will pay 9s. and other solicitors 4s. 6d. in place of £9 and £4 10s., and solicitors outside the city will pay 6s. or 3s. instead of £6 or £3. These proposals are subject to Parliamentary sanction.

THE LAW SOCIETY

HONOURS EXAMINATION, MARCH, 1948

At the examination for honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the examination committee recommended the following as being entitled to honorary distinction:—

FIRST CLASS.—J. H. Craik, LL.M. Liverpool, articled to Mr. W. E. E. Lockley and Mr. J. P. Aspden, LL.B., both of Warrington.

SECOND CLASS (in alphabetical order).—A. G. Coates, J. G. Hodder, K. Lomas, M.A. Cantab., V. M. Robson, G. W. Shaw, LL.B. Liverpool, C. F. J. Thompson, M.A. Oxon, G. Vaughan, R. L. Vigars.

THIRD CLASS (in alphabetical order).—G. W. Brewer, J. A. Cooke, LL.B. Sheffield, R. M. Edwards, LL.B. London, A. J. Holford-Strevens, LL.B. London, R. O. Y. Hughes, LL.B. Manchester, R. T. Jones, M.A. Cantab., J. Marshall, R. T. Masser, A. G. Robinson, B.A. Cantab., H. C. Rutherfurd, C. M. Verney.

The Council of The Law Society have accordingly given a class certificate and awarded the following prize: to Mr. Craik, the Clement's Inn Prize, value about £40. The Council have given class certificates to the candidates in the second and third classes. Ninety candidates gave notice for examination.

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